

Via ECF (S.D.N.Y. and C.D. Cal.) and Email (D. Kan.)

March 13, 2015

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

The Honorable John W. Lungstrum
The Honorable James P. O'Hara
United States District Court for the District of Kansas
500 State Avenue, Suite 517
Kansas City, KS 66101

The Honorable George H. Wu
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, CA 90012-4701

Re: *NCUA v. RBS Securities, Inc., et al.*, No. 11-2340 (D. Kan.)

Dear Judges Cote, Lungstrum, Wu, and O'Hara:

Pursuant to the Courts' March 10, 2015 order, NCUA and NovaStar jointly submit this status report concerning the collection of the NovaStar defendant group's sample loan files.

As explained in NCUA's motions *in limine* to admit expert statistical sampling testimony, filed separately in all three Courts (*see, e.g.*, ECF No. 96 in *NCUA v. Morgan Stanley & Co., Inc.*, 13-cv-06705-DLC), NCUA's samples consisted of both an initial and a supplemental sample of 100 loans per Supporting Loan Group. *Id.* at 14. The purpose of the supplemental samples was to allow NCUA to substitute loans that were unavailable or could otherwise not be re-underwritten, so that it could maintain its desired sample size without having to draw additional samples or issue additional subpoenas for loan files. *See id.* The sample loan files that have been the subject of the parties' periodic reports under the Loan File Re-underwriting Protocol ("LFRP") have included the loans in both NCUA's initial and supplemental samples, even though only about half that number will actually be the subject of re-underwriting expert reports. Accordingly, the reports sometimes suggest that a substantial number of loan files or stipulations need to be obtained, when in fact, the amount necessary for the sample has been obtained.¹

There is one securitization currently at issue in NCUA's case against NovaStar: **NHEL 2006-5** (NovaStar-KS). U.S. Central purchased certificates backed by two unique Supporting Loan Groups from that single securitization. NCUA thus drew a total of 400 sample loans, consisting of 200 initial and 200 supplemental sample loans. NCUA has successfully collected loan files for

¹ NCUA intends to propose changes to the next LFRP report to make this information more clear.

283/400 of those sample loans—well over the roughly 200 loan files that NCUA intends to re-underwrite. Despite diligent effort, NCUA has been unable to collect 117/400 sample loan files, which has impacted the collection totals and percentages that appear in the status report.

Defendant NovaStar Mortgage Funding Corporation (“NovaStar”) was a Depositor and not an originator or issuing entity for NHEL 2006-5. A NovaStar affiliate (“NMI”) originated all of the sample loans from NHEL 2006-5. The loans backing the NHEL 2006-5 offering were also initially serviced by NMI. In October 2007, however, NMI exited the loan servicing business and forwarded its active loan files to the subsequent servicer, Saxon Mortgage. Saxon later transferred active loan files to another subsequent servicer, Ocwen Loan Servicing, LLC.

In April 2014, NovaStar was able to locate and produce 10 sample loan files. In January 2015, NovaStar was able to locate and produce an additional 52 sample loan files, 44 of which had not previously been produced by Ocwen. The only loan files retained by NMI were already paid off or otherwise no longer being serviced by NMI at the time Saxon took over the loan servicing. The loan files retained by NMI that were among NCUA’s sample loans have been produced to NCUA’s counsel. NovaStar represents that it has exhausted its resources in attempting to locate additional sample loan files.

In December 2013, NovaStar produced the loan tapes for the initial and prefunded loans for NHEL 2006-5, which contained the original loan IDs assigned at origination. NCUA served a subpoena seeking the NHEL 2006-5 sample loan files from Ocwen in January 2014. Because Ocwen assigns different loan numbers to the loans it services, it was initially unable to locate the sample loan files on its servicing systems based on the loan IDs and other information in the NHEL 2006-5 loan tape. NCUA subsequently issued a subpoena to the securitization trustee (Deutsche Bank) seeking a loan tape with more identifying information. NCUA also requested a list of all of the loans that Ocwen serviced from NHEL 2006-5. In July 2014, NCUA was able to match 189 sample loans to the list provided by Ocwen, and Ocwen produced the corresponding loan files in September 2014.

That same month, using the loan tape provided by the securitization trustee, NCUA sent Ocwen additional identifying information for 152 sample loans. And although Ocwen’s records indicate that it services many of these 152 loans, Ocwen was only able to produce 6 loan files. In December 2014, Ocwen was able to locate and produce an additional 34 loan files.

In October 2014, NCUA issued a subpoena to former servicer Saxon in an effort to locate the missing loan files for the remaining sample loans. Saxon represented that it did not have any of the sample loan files.

In sum, despite diligent efforts—which included requests or subpoenas issued to the NovaStar affiliate, Wachovia, RBS, multiple servicers, and the trustee—NCUA has to date been unable to collect 117/400 sample loan files for NHEL 2006-5. NCUA asserts that 283 is still a sufficient number of loans for NCUA to be able to complete its re-underwriting for NHEL 2006-5.

Respectfully submitted,

/s/ Stephen M. Tillery

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